



9110-9B

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3001, 3002, 3003, 3004, 3005, 3006, 3012, 3018, 3022, 3023, 3033, 3035, 3036, 3042, 3045, 3052, and 3053

Docket No. DHS-2009-0085

RIN 1601-AA28

Homeland Security Acquisition Regulation (HSAR); Revision Initiative [HSAR Case 2009-002]

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Final rule.

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**SUMMARY:** DHS is issuing a final rule amending multiple sections of the Homeland Security Acquisition Regulation (HSAR). These amendments align existing content with the Federal Acquisition Regulation (FAR); implement Section 695 of the Post-Katrina Emergency Management Reform Act of 2006 by restricting the length of certain noncompetitive contracts entered into by the Department of Homeland Security to facilitate the response to or recovery from a natural disaster, act of terrorism, or other manmade disaster; clarify agency acquisition regulations; and make editorial corrections.

**DATES:** *Effective Date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Teresa McConahie, Office of the Chief Procurement Officer, Department of Homeland Security, (202) 447-0271.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**II. Discussion of Final Rule**

**III. Regulatory Analyses**

**A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)**

**B. Regulatory Flexibility Act**

**C. Paperwork Reduction Act**

**D. Executive Order 13132 (Federalism)**

**E. National Environmental Policy Act**

**I. Background**

This final rule amends the Department's acquisition regulation which was initially issued in 2003. 68 FR 67871 (Dec. 4, 2003), as amended at 71 FR 25767 (May 2, 2006). On September 13, 2010, DHS published a notice of proposed rulemaking NPRM, with a public comment period ending on November 12, 2010. 75 FR 55529. DHS received no public comments on this

NPRM. DHS is now adopting the proposed rule, with minor changes, as final.

## **II. Discussion of Final Rule**

In the NPRM, DHS proposed various changes to the Homeland Security Acquisition Regulations (HSAR), including changes to 48 CFR part 3006 implementing section 695 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109-295, 120 Stat. 1394, 1460 (Oct. 4, 2006). This final rule implements the majority of the changes described in the "Discussion of Proposed Rule" section of the NPRM. See 75 FR 55530-55532.

Additionally, as a result of further internal review, DHS is making several minor changes to the proposed rule in this final rule. The changes are administrative in nature and do not change the substance of the rule. The changes to the proposed rule include: (1) adding an "s" to the word "System" in the phrase "DHS Sensitive System Handbook" at 3004.470-2; changing the phrase "DHS legal counsel" to "legal counsel" at 3003.204-(a); and correcting the citation at 3003.1003(a) to read "(FAR) 48 CFR 52.203-13" in place of "(FAR) 49 CFR 52.203-13". DHS is correcting these inadvertent typographical errors to ensure the final rule is clear and precise.

DHS is also making a technical change by removing the proposed change at (HSAR) section 3009.403 designating the DHS

Heads of Contracting Activity as the DHS Suspension and Debarment Officials. The Secretary of Homeland Security has approved a new Suspension and Debarment program which eliminates the Heads of the Contracting Activities as Suspension and Debarment Officials. The change in the proposed rule is no longer necessary and is not included in this final rule.

DHS is also correcting the title of the FEMA HCA at 3002.101 to read "Director, Office of Acquisition Management (FEMA)" in place of "Director, Procurement (FEMA)". This change is necessary due to a change in the naming convention for this office.

In the NPRM, DHS proposed to delete paragraph (d) of clause 3052.216-71, Determination of Award Fee, to align the HSAR with the OMB guidance, Appropriate Use of Incentive Contracts (Dec. 4, 2007). This final rule also revises the date of the entire clause to distinguish the existing version of the clause from the revised version.

The NPRM also proposed the inclusion of paragraph (k)(1) of 3052.204-71 Alternate I regarding contractor employee access. In this final rule, the proposed change to paragraph (k)(1) is not included because a similar provision already exists at (HSAR) 3004.470-2, citing to the DHS Sensitive Systems Policy Directive 4300A and the DHS 4300A Sensitive Systems Handbook both of which address contractor employee access.

Throughout this final rule, references to Title 41 of the United States Code have been revised to reflect the recodification of Title 41 under Public Law 111-350, January 4, 2011.

### **III. Regulatory Analyses.**

*A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review).*

This is not a significant regulatory action under Section 6(b) of Executive Order 12866, as supplemented by Executive Order 13563, and the Office of Management and Budget has not reviewed this final rule. This final rule is not a major rule under 5 U.S.C. 804.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the term "small entities" comprises of small businesses, not for profit organizations that are independently owned and operated and are not dominant in their fields, and government jurisdictions with populations of less than 50,000. DHS certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act because the rule applies to internal approval procedures, supplements the Federal Acquisition Regulations, and is intended to clarify or eliminate

existing agency acquisition regulations and policies.

*C. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval any reporting requirements inherent in a rule. The Paperwork Reduction Act applies to this final rule. However, the information collection requirements imposed by the provisions 3052.205-70 and 3052.212-70 are currently covered by the approved information collection requirements for provisions (OMB Clearance numbers 1600-0003, Post-Contract Award Information, and 1600-0005, Solicitation of Proposal Information for Award of Public Contracts). DHS considers that any changes due to the use of these clauses will be within the estimated hours for the existing approved OMB clearance. The clause at 3052.203-70 does not create a new information collection requirement. It provides a format for contractors to use when making a disclosure under FAR 3.1003 and 52.203-13. The FAR disclosure requirements are approved under OMB Clearance Number 9000-0164.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Use of these two information collections, 1600-0003 and 1600-0005, has been approved by OMB until January 31, 2012, and February 28,

2015, respectively. The extension for 1600-0003 is currently under review at OMB.

*D. Executive Order 13132 (Federalism)*

This final rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this rule does not warrant the preparation of a federalism impact statement.

*E. National Environmental Policy Act*

We have analyzed this final rule under Department of Homeland Security Management Directive 023-01 which guides the Department in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule, which does not involve any extraordinary circumstances, is categorically excluded under paragraphs A3(b) and A3(d) in Table I of Appendix A of Directive 023-01 because it implements legislation and amends acquisition regulations without changing the regulations' environmental effect.

**List of Subjects in 48 CFR Parts 3001, 3002, 3003, 3004, 3005,**

3006, 3012, 3018, 3022, 3023, 3033, 3035, 3036, 3042, 3045, 3052 and 3053.

Government procurement.

Daniel L. Clever,  
Deputy Chief Procurement Officer,  
Department of Homeland Security

Accordingly, DHS amends 48 CFR parts 3001, 3002, 3003, 3004, 3005, 3006, 3012, 3018, 3022, 3023, 3033, 3035, 3036, 3042, 3045, 3052, and 3053 as follows:

1. The authority citation for 48 CFR parts 3001, 3002, 3003, 3004, 3005, 3006, 3022, 3023, 3033, 3035, 3036, 3042, 3045, and 3053 is revised to read as follows:

Authority: 5 U.S.C. 301-302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

#### **PART 3001-FEDERAL ACQUISITION REGULATION SYSTEM**

2. Amend Subpart 3001.1 by adding section 3001.103 to read as follows:

##### **3001.103 Authority.**

The HSAR is issued by DHS's Chief Procurement Officer, who is the Senior Procurement Executive (SPE), see 41 U.S.C. 1702 and DHS Delegation Number 0702, under authority of 5 U.S.C. 301-302, the Office of Federal Procurement Policy Act, Pub.L.



No. 93-400, 88 Stat. 796 (1974), including sections 22 and 25, 41 U.S.C. 1707, 1302 and 1303, and (FAR) 48 CFR part 1, subpart 1.3.

3. Revise section 3001.105-2 to read as follows:

**3001.105-2 Arrangement of regulations.**

(a) General. The HSAR, which encompasses both Department-wide and Component-unique guidance, conforms to the arrangement and numbering system prescribed by (FAR) 48 CFR 1.105-2.

Guidance that is unique to a Component contains the organization's acronym or abbreviation directly following the title. The following acronyms and abbreviations apply:

DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);

Federal Emergency Management Agency (FEMA);

Federal Law Enforcement Training Center (FLETC);

Transportation Security Administration (TSA);

U.S. Coast Guard (USCG);

U.S. Customs and Border Protection (CBP);

U.S. Immigration and Customs Enforcement (ICE); and

U.S. Secret Service (USSS).

4. Revise section 3001.105-3 to read as follows:

**3001.105-3 Copies.**

Official versions of the HSAR are available in the Code of Federal Regulations, as supplemented and revised from time to

time by the **Federal Register**, both of which are available from the Government Printing Office in paper and electronic form.

The HSAR is also available in electronic form at

<http://www.dhs.gov>. A convenient but unofficial up-to-date

version of the HSAR is also available from the Government

Printing office at <http://www.gpoaccess.gov/ecfr/index.html>.

The Homeland Security Acquisition Manual (HSAM), which

complements the HSAR, can also be found at <http://www.dhs.gov>

5. In section 3001.301, revise paragraph (a)(1) to read as follows:

**3001.301 Policy.**

(a)(1) The HSAR is issued for Departmental guidance according to the policy cited in (FAR) 48 CFR 1.301. The HSAR establishes uniform Department of Homeland Security policies and procedures for all acquisition activities within the Department of Homeland Security. Component supplemental acquisition regulations to be inserted in the HSAR as a HSAR supplement regulation must be reviewed and approved by the Chief Procurement Officer (CPO) before the CPO authorizes and submits the proposed content for publication in the **Federal Register** under (FAR) 48 CFR part 1, subparts 1.3 and 1.5.

\* \* \* \* \*

**3001.301-70 [Amended]**

6. Amend section 3001.301-70 in paragraph (a) introductory text by removing "20598" and adding "20528" in its place.

7. In section 3001.301-71, revise paragraph (c) to read as follows:

**3001.301-71 Effective Date.**

\* \* \* \* \*

(c) When required by law, contracting officers must modify existing contracts to include HSAR changes. Otherwise, and where feasible, contracting officers should consider using the Changes clause or other suitable authority, to modify existing contracts to include HSAR changes.

8. In section 3001.303, revise paragraph (a)(3) to read as follows:

**3001.303 Publication and codification.**

(a) \* \* \*

(3) Coverage in HSAR chapter 30 that supplements the FAR will use part, subpart, section, and subsection numbers ending in "70" through "89". A series of numbers beginning with "70" is used for provisions and clauses (e.g., (HSAR) 48 CFR 3001.301-70).

\* \* \* \* \*

**3001.304 [Amended]**

9. Amend section 3001.304 in paragraph (a) by adding the words "Department of" before the words "Homeland Security" in the first sentence.

**3001.403 [Amended]**

10. Amend section 3001.403 by removing the word "deviation" in the first sentence and adding the word "deviations" in its place.

**3001.602-3 [Amended]**

11. Amend section 3001.602-3 by removing the words "Department of Homeland Security (DHS)" in the first sentence and adding in their place "DHS".

**PART 3002 - DEFINITIONS OF WORDS AND TERMS**

12. Amend section 3002.101 by removing the definition of "Simplified acquisition threshold" and revising the definitions of "Component", "Head of the Contracting Activity (HCA)", "Senior Procurement Executive (SPE)", and the introductory paragraph of the "Sensitive Information" definition to read as follows:

**3002.101 Definitions.**

\* \* \* \* \*

*Component* means the following entities for purposes of this chapter:

- (1) DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);
- (2) Federal Emergency Management Agency (FEMA);
- (3) Federal Law Enforcement Training Center (FLETC);
- (4) Transportation Security Administration (TSA);
- (5) U.S. Coast Guard (USCG);
- (6) U.S. Customs and Border Protection (CBP);
- (7) U.S. Immigration and Customs Enforcement (ICE); and
- (8) U.S. Secret Service (USSS).

\* \* \* \* \*

*Head of the Contracting Activity (HCA)* means the official who has overall responsibility for managing the contracting activity. For DHS, the HCAs are:

- (1) Director, Office of Procurement Operations (OPO);
- (2) Director, Office of Selective Acquisitions (OSA);
- (3) Director, Office of Acquisition Management (FEMA);
- (4) Chief, Procurement Division (FLETC);
- (5) Assistant Administrator for Acquisition (TSA);
- (6) Director of Contracting and Procurement (USCG);
- (7) Executive Director, Procurement (CBP);
- (8) Director, Office of Acquisition Management (ICE); and
- (9) Chief, Procurement Operations (USSS).

\* \* \* \* \*

*Senior Procurement Executive (SPE)* for the Department of Homeland Security means the DHS Chief Procurement Officer (CPO), who is the individual appointed pursuant to 41 U.S.C. 1702 to be responsible for management direction of the procurement system of DHS, including implementation of the unique procurement policies, regulations, and standards of DHS.

*Sensitive Information*, as used in this Chapter, means any information which if lost, misused, disclosed, or, without authorization, is accessed or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

\* \* \* \* \*

#### **3002.270 [Amended]**

13. Amend the abbreviation list entry in section 3002.270 by removing "HCA Head of Contracting Activity" and adding in its place "HCA Head of the Contracting Activity".

#### **PART 3003 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

14. Revise section 3003.101-3 to read as follows:

**3003.101-3 Agency regulations.**

The United States Office of Government Ethics has promulgated regulations applicable to the entire Executive Branch that address the conduct matters referenced in (FAR) 48 CFR 3.101-3. See 5 CFR vol. 3, ch. XVI, subch. B. The Department of Homeland Security has also issued Management Directive 0480.1, Ethics/Standards of Conduct.

15. Revise section 3003.204 to read as follows:

**3003.204 Treatment of violations.**

(a) The HCA is the official designated to make the determination under (FAR) 48 CFR 3.204(a) whether a gratuities violation has occurred. If the HCA has been personally and substantially involved in the specific procurement, the advice of legal counsel should be sought to determine whether the CPO should designate an alternate decision maker.

(b) The HCA shall ensure that the hearing procedures required by (FAR) 48 CFR 3.204(b) are afforded to the contractor. Legal counsel shall be consulted regarding the appropriateness of the hearing procedures that are established.

(c) If the HCA determines that the alleged gratuities violation occurred the HCA shall consult with legal counsel regarding appropriate action and notify the Office of Inspector General.

16. Add Subpart 3003.10 to read as follows:

**Subpart 3003.10-- Contractor Code of Business Ethics and  
Conduct**

**Sec.**

**3003.1003 Requirements.**

**3003.1004 Contract clauses.**

**Subpart 3003.10 Contractor Code of Business Ethics and Conduct**

**3003.1003 Requirements.**

(a) Contractor requirements. Contractors making written disclosures under the clause at (FAR) 48 CFR 52.203-13 must use the electronic Contractor Disclosure Form at <http://www.oig.dhs.gov>. Contractors making disclosures under contracts which do not contain the clause at (FAR) 48 CFR 52.203-13 are encouraged to also use this electronic form.

**3003.1004 Contract clauses.**

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.203-70, Instructions for Contractor Disclosure of Violations, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.203-13.

**PART 3004 - Administrative Matters**

17. Amend section 3004.470-2 by revising paragraph (a) to read as follows:

**3004.470-2 Policy.**



(a) DHS's policies and procedures on contractor personnel security requirements are set forth in various management directives (MDs), Directives, and Instructions. MD 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information describes how contractors must handle sensitive but unclassified information. The DHS Sensitive Systems Policy Directive 4300A and the DHS 4300A Sensitive Systems Handbook, provide the policies and procedures on security for Information Technology resources. Compliance with these policies and procedures, as amended, is required.

\* \* \* \* \*

**3004.470-3 [Amended]**

18. Amend section 3004.470-3 in paragraph (b) in the second sentence by removing the word "Officers" and adding "officers" in its place.

**3004.804-1 [Removed]**

19a. Remove section 3004.804-1.

19b. In section 3004.804-570, revise paragraphs (a)(1) through (a)(3) to read as follows:

**3004.804-570 Supporting closeout documents.**

(a) \* \* \*

(1) DHS Form 700-3, Contractor's Release (e.g., see (FAR) 48 CFR 52.216-7);

(2) DHS Form 700-2, Contractor's Assignment of Refunds, Rebates, Credits and Other amounts (e.g., see (FAR) 48 CFR 52.216-7);

(3) DHS Form 700-1, Cumulative Claim and Reconciliation Statement (e.g., see (FAR) 48 CFR 4.804-5(a)(13)); and

\* \* \* \* \*

#### **PART 3005 PUBLICIZING CONTRACT ACTIONS**

20. Amend Subpart 3005.4 by adding sections 3005.470, 3005.470-1, and 3005.470-2 to read as follows:

**3005.470 Contractor award announcements, advertisements, and releases.**

**3005.470-1 Policy.**

(a) DHS policy requires its contracting officers to restrict DHS contractors from referring to its DHS contract(s) in commercial advertising in a manner that states or implies the Government approves or endorses the contractor's products or services or considers them superior to other products or services. The intent of this policy is to prevent the appearance of Government bias toward any product or service.

(b) The Department's contractors share the responsibility for protecting sensitive and classified information related to efforts under their contracts. For any contract that involves sensitive or classified information, prior to the release of any contract award announcement, advertisement, or other release of

information pertaining to the contract, the contractor must obtain the approval of the responsible contracting officer.

**3005.470-2 Contract clauses.**

(a) Insert the clause at (HSAR) 48 CFR 3052.205-70, Advertisements, Publicizing Awards, and Releases, in all solicitations and contracts that exceed the simplified acquisition threshold.

(b) Except for research contracts with educational institutions, if the contract involves sensitive or classified information, use the clause with its Alternate I. For research contracts with educational institutions, see (HSAR) 48 CFR 3035.70-2(b).

**PART 3006 - COMPETITION REQUIREMENTS**

21. Amend subpart 3006.3 by adding sections 3006.302-1, 3006.302-270, 3006.303, 3006.303-270, 3006.304, and 3006.304-70 to read as follows:

**Subpart 3006.3—OTHER THAN FULL AND OPEN COMPETITION**

\* \* \* \* \*

**3006.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.**

**3006.302-270 Unusual and compelling urgency.**

\* \* \* \* \*

**3006.303 Justifications.**

**3006.303-270 Content.**

**3006.304 Approval of justification.**

**3006.304-70 DHS Approval of justification.**

**3006.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.**

(b)(4) The contracting officer may rely on this exception in the case where only one source is available to provide additional units or replacement items under a specific make and model requirement, but only where the CPO has determined in accordance with the agency's standardization program that only the specific make(s) and model(s) will satisfy the agency's needs.

**3006.302-270 Unusual and compelling urgency.**

(d)(1)(iii) For contract awards to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, that relies on this exception, the period of performance shall be limited to the minimum period necessary to meet the urgent and compelling requirements of the work to be performed and to enter into another contract for the required goods or services through the use of competitive procedures, but in no event shall the period of performance exceed 150 days, unless the Head of the Contracting Activity (or higher approval authority if required by (FAR) 48 CFR 6.304 or DHS procedures) determines that exceptional circumstances apply, approving the justification as set forth in (HSAR) 48 CFR

3006.304. The limitation on the period of performance applies to contracts awarded in response to, or to recovery from:

(A) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121-5207) (see <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations);

(B) An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 204.21 (see <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations); or

(C) An incident for which the National Operations Center (NOC), through the National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support.

\* \* \* \* \*

### **3006.303 Justifications.**

#### **3006.303-270 Content.**

(a) (9) (iv) For a proposed contract subject to the restrictions of (HSAR) 48 CFR 3006.302-270 (d) (1) (iii) and where (FAR) 48 CFR 6.302-2 is cited as the authority, the exceptional circumstances

allowing for an award for a period of performance in excess of 150 days.

**3006.304 Approval of justification.**

**3006.304-70 DHS Approval of justification.**

A justification for other than full and open competition that cites (FAR) 48 CFR section 6.302-2 as its authority shall be approved in writing by the HCA (unless a higher approval authority is required in accordance with (FAR) 48 CFR section 6.304 or DHS procedures) for a proposed DHS contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance in excess of 150 days. The justification should make plain the exceptional circumstances that justify the duration of the contract. This authority may not be redelegated by the HCA.

22. Add part 3012 to read:

**PART 3012 -- ACQUISITION OF COMMERCIAL ITEMS**

**Subpart 3012.3 Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

Sec.

3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

Authority: 5 U.S.C. 301-302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

**3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f) Solicitation provisions and contract clauses. Insert (HSAR) 48 CFR 3052.212-70, Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items, in any solicitation or contract for commercial items when any of the provisions or clauses listed therein applies and where incorporation by reference of each selected provision or clause is, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

23. Add part 3018 to read:

**PART 3018 EMERGENCY ACQUISITIONS**

**Subpart 3018.1 Available Acquisition Flexibilities**

Sec.

3018.109 Priorities and allocations.

Authority: 5 U.S.C. 301-302, 41 U.S.C. 1707, 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0702.

**3018.109 Priorities and allocations.**

DHS Components may assign priority ratings on contracts and orders as authorized by the Defense Priorities and Allocation System (DPAS). (See (HSAR) 48 CFR 3011.602.)

**PART 3022 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

24. Amend section 3022.406-9(c)(1) by removing "DHS Form 0700-04" and adding in its place "DHS Form 700-4".

**PART 3023 ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

25. Amend Part 3023 by revising the heading to read as set forth above.

\* \* \* \* \*

**3023.1002 [Removed]**

26a. Amend subpart 3023.10 by removing section 3023.1002.

26b. Add section 3023.1004 to read as follows:

**3023.1004 Requirements.**

DHS Directive 023-02 Environmental Compliance Program provides guidance and direction for compliance with environmental laws, regulations and executive orders. DHS Directive 025-01, Sustainable Practices for Environmental, Energy and Transportation, provides guidance and direction for compliance with green purchasing and other sustainable practices contained in Executive Order 13423. Contracting officers shall ensure



that solicitations and contracts contain appropriate sustainable practices requirements, provisions and clauses. Contractors shall support the DHS Environmental Policy by taking appropriate actions to eliminate or reduce their impacts on the environment.

#### **PART 3033 - PROTESTS, DISPUTES, AND APPEALS**

27. Amend part 3033 by adding subpart 3033.1 to read as follows:

##### **Subpart 3033.1 Protests**

Sec.

3033.102 General.

3033.102-90 Protests on classified solicitations (OSA).

**3033.102-90 Protests on classified solicitations (OSA).**

To ensure that classified information is protected and appropriate security measures are coordinated as required, protests involving classified solicitations issued by the Office of Selective Acquisitions (OSA) shall be submitted directly to the contracting officer for further transmission to the GAO, the United States Court of Federal Claims, or for internal resolution in the case of agency protests. Specific instructions will be provided in Section L of the solicitation.

#### **PART 3035 - RESEARCH AND DEVELOPMENT CONTRACTING**

**3035.7000 [Removed]**

28a. Amend subpart 3035.70 by removing section 3035.7000.

28b. Add sections 3035.70-1 and 3035.70-2 to read as follows:

**3035.70-1 Policy**

The Department of Homeland Security (DHS) desires widespread dissemination of the results of funded non-sensitive research. The Contractor, therefore, may publish (subject to the provisions of the "Data Rights" and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media.

**3035.70-2 Contract clause.**

(a) The contracting officer shall use the clause at (HSAR) 48 CFR 3052.235-70, Dissemination of Information - Educational Institutions, in contracts with educational institutions for research that is not sensitive or classified.

(b) If the contract involves sensitive or classified research, the contracting officer shall prepare and insert a Special Contract Requirement that conditions dissemination upon the approval of a designated Government official.

**PART 3036 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

**3036.201 [Removed]**

29. Remove section 3036.201.

**PART 3042 - CONTRACT ADMINISTRATION AND AUDIT SERVICES**

**Subpart 3042.2 [Removed]**

30. Remove subpart 3042.2.

31. Revise section 3042.1502 to read as follows:

**3042.1502 Policy.**

(a) Components shall use the Contractor Performance Assessment Reporting System ([CPARS](#)) or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

(e) Components shall use the [Construction Contractor Appraisal Support System](#) (CCASS) module of CPARS, or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating construction contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

(f) Components shall use the Architect-Engineer Contract Administration Support System (ACASS) module of CPARS or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating architect-engineer contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

**PART 3045 - [REMOVED AND RESERVED]**

32. Under the authority of 5 U.S.C. 301-302, part 3045 is removed and reserved.

**PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

33. Amend section 3052.101 by adding the following note:

Subpart 3052.1 Instructions for Using Provisions and Clauses  
Sec.

3052.101 Using Part 3052.

3052.101 Using Part 3052.

NOTE to 3052.101: The solicitation provisions and contract clauses matrix referencing all HSAR provisions and clauses is available at <http://www.dhs.gov/xopnbiz/> under Policy and Regulations, Homeland Security Acquisition Regulation (HSAR).

34. Amend subpart 3052.2 by adding 3052.203-70 to read:

**3052.203-70 Instructions for Contractor Disclosure of Violations.**

As prescribed in (HSAR) 48 CFR 3003.1004(a), insert the following clause:

**Instructions for Contractor Disclosure of Violations ([DATE])**

When making a written disclosure under the clause at FAR 52.203-

13, paragraph (b)(3), the Contractor shall use the Contractor

Disclosure Form at <http://www.oig.dhs.gov> and submit the

disclosure electronically to the Department of Homeland Security

Office of Inspector General. The Contractor shall provide a copy

of the disclosure to the Contracting Officer by email or

facsimile on the same business day as the submission to the

Office of Inspector General. The Contractor shall provide the

Contracting Officer a concurrent copy of any supporting materials

submitted to the Office of Inspector General.

35-36. Amend section 3052.204-71:

a. By capitalizing the first letter of every occurrence of the words "contractor" and "government" and by revising paragraph (a) of the clause; and

b. In Alternate I by capitalizing the first letters of every occurrence of the words "contractor" and "contracting officer" in the alternate content, by removing paragraph (k) (1) of the alternate and renumbering paragraphs (k) (2) and (3) to (k) (1) and (2) respectively, and by revising the date of Alternate I.

The revisions read as follows:

**3052.204-71 Contractor employee access ([DATE])**

(a) *Sensitive Information*, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

\* \* \* \* \*

**"Alternate I ([DATE])"**

\* \* \* \* \*

37. Amend subpart 3052.2 by adding 3052.205-70 to read as follows:

**3052.205-70 Advertisements, Publicizing Awards, and Releases.**

As prescribed in (HSAR) 48 CFR 3005.470-2, insert the following clause:

**Advertisements, Publicizing Awards, and Releases ([DATE])**

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(End of clause)

**Alternate I ([DATE]).** If a contract involves sensitive or classified information, designate the paragraph in the base clause as (a) and add the following paragraph (b) to the clause:

(b) All advertisements, releases, announcements, or other publication regarding this contract or the agency programs and projects covered under it, or the results or conclusions made pursuant to performance, must be approved by the Contracting Officer. Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity, release, or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(End of clause)

38. Amend subpart 3052.2 by adding section 3052.212-70 to read as follows:

**3052.212-70 Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items.**

As prescribed in (HSAR) 48 CFR 3012.301, insert the following clause:

**Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items ([DATE])**

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[The Contracting Officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The Contracting Officer may add the date of the provision or clause if desired for clarity.]

(a) *Provisions.*

\_\_\_\_ 3052.209-72 Organizational Conflicts of Interest.

\_\_\_\_ 3052.216-70 Evaluation of Offers Subject to An Economic Price Adjustment Clause.

\_\_\_\_ 3052.219-72 Evaluation of Prime Contractor Participation in the DHS Mentor Protégé Program.

(b) *Clauses.*

\_\_\_\_3052.203-70 Instructions for Contractor Disclosure of Violations.

\_\_\_\_3052.204-70 Security Requirements for Unclassified Information Technology Resources.

\_\_\_\_3052.204-71 Contractor Employee Access.

\_\_\_\_Alternate I

\_\_\_\_3052.205-70 Advertisement, Publicizing Awards, and Releases.

\_\_\_\_3052.209-73 Limitation on Future Contracting.

\_\_\_\_3052.215-70 Key Personnel or Facilities.

\_\_\_\_3052.216-71 Determination of Award Fee.

\_\_\_\_3052.216-72 Performance Evaluation Plan.

\_\_\_\_3052.216-73 Distribution of Award Fee.

\_\_\_\_3052.217-91 Performance. (USCG)

\_\_\_\_3052.217-92 Inspection and Manner of Doing Work.  
(USCG)

\_\_\_\_3052.217-93 Subcontracts. (USCG)

\_\_\_\_3052.217-94 Lay Days. (USCG)

\_\_\_\_3052.217-95 Liability and Insurance. (USCG)

\_\_\_\_3052.217-96 Title. (USCG)

\_\_\_\_3052.217-97 Discharge of Liens. (USCG)

\_\_\_\_3052.217-98 Delays. (USCG)

\_\_\_\_3052.217-99 Department of Labor Safety and Health



Regulations for Ship Repair. (USCG)

\_\_\_\_3052.217-100 Guarantee. (USCG)

\_\_\_\_3052.219-70 Small Business Subcontracting Plan  
Reporting.

\_\_\_\_3052.219-71 DHS Mentor Protégé Program.

\_\_\_\_3052.228-70 Insurance.

\_\_\_\_3052.228-90 Notification of Miller Act Payment Bond  
Protection. (USCG)

\_\_\_\_3052.228-91 Loss of or Damage to Leased Aircraft.  
(USCG)

\_\_\_\_3052.228-92 Fair Market Value of Aircraft. (USCG)

\_\_\_\_3052.228-93 Risk and Indemnities. (USCG)

\_\_\_\_3052.236-70 Special Provisions for Work at Operating  
Airports.

\_\_\_\_3052.242-72 Contracting Officer's Technical  
Representative.

\_\_\_\_3052.247-70 F.o.B. Origin Information.

\_\_\_\_Alternate I

\_\_\_\_Alternate II

\_\_\_\_3052.247-71 F.o.B. Origin Only.

\_\_\_\_3052.247-72 F.o.B. Destination Only.

(End of clause)

**3052.216-71 [Amended]**

39. Amend section 3052.216-71, Determination of Award Fee by removing the words "(DEC 2003)" from the title of the clause, adding in their place the words "([DATE])" and by removing paragraph (d).

**3052.235-70 [Amended]**

40. Amend section 3052.235-70 by removing the words "48 CFR 3035.7000" in the introductory paragraph and adding in their place the reference to "48 CFR 3035.70-2."

**3052.242-71 [Removed]**

41. Remove section 3052.242-71.

**3052.245-70 [Removed]**

42. Remove section 3052.245-70.

**PART 3053—FORMS**

43. Amend section 3053.204-70 by revising paragraphs (a) through (c) to read as follows:

**3053.204-70 Administrative matters.**

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(a) DHS Form 700-1, Cumulative Claim and Reconciliation Statement. (See (HSAR) 48 CFR 3004.804-570(a)(3).)

(b) DHS Form 700-2, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts. (See (HSAR) 48 CFR 3004.804-570(a)(2).)

(c) DHS Form 700-3, Contractor Release. (See (HSAR) 48 CFR 3004.804-570(a)(1).)

**3053.222-70 [Amended]**

44. Amend section 3053.222-70 by removing "DHS Form 0700-04" in the last line and adding "DHS Form 700-4" in its place.

**3053.303 [Amended]**

45. Amend section 3053.303 by removing "DHS Form 0700-01", "DHS Form 0700-02", "DHS Form 0700-03", and "DHS Form 0700-04" from the table in the "Form No." column, and adding in their place, respectively "DHS Form 700-1", "DHS Form 700-2", "DHS Form 700-3", and "DHS Form 700-4"; and by removing the whole entry for "Contractor Report of Government Property/DHS Form 0700-05."

**3053.245-70 [Removed and Reserved]**

46. Remove and reserve section 3053.245-70.

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